IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Crl.Rev.Pet.No. 4100 of 2007()

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ORDER IN CMP.9808/07 OF CJM, MANJERI

REVN. PETITIONER: COMPLAINANT

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M.ASHRAF, S/O MUHAMMED KURIKKAL,
MANJERI HOUSE, PANDIKKAD P.O.,
MALAPPURAM DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

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STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**V. RAMKUMAR, J.**

**Crl. R.P. No. 4100 OF 2007**

**Dated this the 19th day of November, 2007**

**O R D E R**

The revision petitioner, who is the complainant in a prosecution under section 138 of the Negotiable Instruments Act, 1881, involving a cheque for Rs.1,00,000/-, challenges the order dated 11.10.07 dismissing the complaint for the reason that the complainant was not present and a proof affidavit was also not filed.

2. The petitioner filed the complaint on 20.9.07 and it was adjourned for taking the sworn statement to 27.9.07. On both these dates the complainant as well as his counsel was present before court. But on 27.9.07 there was no sitting and the case was adjourned to 11.10.07 on which day the complainant was not present and the court below passed the impugned order.

3. According to the revision petitioner, his Advocate's clerk had noted the date as 12.10.07 instead of 11.10.07 and that is the reason why the complaint happened to be

dismissed. There is no reason to disbelieve the revision petitioner who will not in the normal course remain absent on a day to which his complaint stood posted for taking sworn statement. Accordingly, the impugned order is set aside and the C.M.P.9808/07 will stand restored to file before the CJM, Manjeri. The petitioner shall appear before the court below on 14.12.07 without any further notice and shall be ready with the proof affidavit or with the preparedness to have his sworn statement taken.

This Crl.R.P. is disposed of as above.

**(V. RAMKUMAR, JUDGE)**

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